(3) 97-472

No. 97-

Supreme Court, U.S.
FILED
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CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1997

BILL JONES,
SECRETARY OF STATE OF CALIFORNIA
*Petitioner,*

*v.*

BATES, ET AL.,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI (OR IN THE ALTERNATIVE WRITS OF PROHIBITION AND MANDAMUS) TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

## SECOND SUPPLEMENTAL BRIEF.


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26 pp

## SECOND SUPPLEMENTAL BRIEF

Petitioner Bill Jones, Secretary of State of California, files this Second Supplemental Brief pursuant to Supreme Court Rule 15.8, which permits a party to file a supplemental brief calling attention to intervening matters not available at the time of the party's last filing.

Petitioner has advised this Court that unless the pending "Petition For A Writ Of Certiorari, Or Writs Of Prohibition And Mandamus" ("Petition") is granted immediately, the Secretary of State will be caught in a cross fire between state courts which will enforce Proposition 140 based on the decision of the California Supreme Court in *Legislature* v. *Eu*, 54 Cal.3d 492 (1991) and the contrary rulings of the federal court in this case. Petition, p. 19.

Attached as Appendix "A" to this Second Supplemental Brief is an accurate reproduction of a court endorsed, stamped copy of a Petition for Writ of Mandate filed in the Superior Court of California, County of Orange on Tuesday, September 30, 1997.

Respectfully submitted.

EINER ELHAUGE
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HON. WILLIAM P. CLARK
WILLIAM BENTLEY BALL
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*Attorneys for Petitioner Secretary of State*

October 3, 1997

**APPENDIX A**

**FILED: September 30, 1997**
**Orange County Superior Court**

LAW OFFICES OF RAY HENDRICKSON, Ph.D.
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HOWARD J. KLEIN, Esq., Bar No. 77029
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Attorneys for Petitioners

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

Case No. 784831

J. HARRIS DEAN, BRUCE WHITAKER, JOHNNIE WALKER, KAREN WATT, YASMIN GHAZNAZI, JASON SHANNON, PETER PETRUZZI, TERRY BRONSON, and DAVID BACIGALUPI,

Petitioners,

BILL JONES,
Secretary of State of California,

Respondent.

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## PETITION FOR WRIT OF MANDATE

Petitioners allege as follows:

1. Petitioners are registered voters in the State of California, and bring this action on their own behalf and on behalf of all of the registered voters in the State of California.

2. Petitioners J. HARRIS DEAN and BRUCE WHITAKER are, and at all times mentioned herein were, residents of and registered voters in the County of Orange, State of California.

3. Petitioner JOHNNIE WALKER is, and at all times herein mentioned was, a resident of and registered voter in the County of Los Angeles, State of California.

4. Petitioners KAREN WATT, YASMIN GHAZNAZI, JASON SHANNON, and PETER PETRUZZI are, and at all times mentioned herein were, residents of and registered voters in the County of San Francisco, State of California.

5. Respondent BILL JONES is, and at all times mentioned herein was the Secretary of State of California, and the Chief Elections Officer of the State of California.

6. Respondent has a clear, present and ministerial duty to perform his duties as Secretary of State of California, and to uphold the Constitution of the State of California, the Election Code and other laws of this State, including but not limited to enforcement of Article IV, Section 2 of the California Constitution, the provisions put into law by Proposition 140, enacted by the voters of the State of California in 1990.

7. Respondent has abused his discretion by announcing that he intends to place the names of incumbent Legislatures seeking office on the ballot who would otherwise be barred by the incumbency provisions of Article IV, Section 2 of the California Constitution, who file timely declarations of candidacy and meet other procedural criteria, **if such person are**

**parties to that action *Bates, et al.*, v. *Jones, et al.* (1997), 958 F.Supp.1446, and the *Bates* action is upheld by the 9th Circuit.** See Exhibit "A" attached hereto.

8. Petitioners are registered voters in the State of California, who have stated their desire that term limits be imposed in California for legislators, and who would benefit by application of Article IV, Section 2 of the California Constitution to all legislative candidates. See Exhibits "C" through "F", inclusive, attached hereto and made a part hereof.

9. Petitioners have performed all conditions precedent to the filing of this petition that are required by law. There is no underlying petition in an inferior court regarding this matter, and there are no administrative actions that petitioners are required to pursue prior to the commencement of this action.

10. At all times herein mentioned, respondent has been able to perform the duty mentioned above. Notwithstanding such ability respondent continues to fail and refuse to perform such duty.

11. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, in that this is an action to compel performance of the duty of the Secretary of State, and no other course other than this petition for a writ of mandate is sufficient or adequate to enforce the laws of the State of California, and further, because of the immanency of the primary election in 1998, an early determination of this question is necessary and required.

WHEREFORE, petitioner prays:

1. That this court issue a peremptory writ in the first instance commanding respondent to fully carry out his duties as the Chief Elections Officer of the State of California, by enforcing against applicable candidates the provisions contained

in Article IV, Section 2 of the California Constitution that establish term limitations for members of California's Senate and Assembly, as enacted by the voters in the election of 1990 in Proposition 140.

2. That the court, alternatively, first issue an alternative writ commanding respondent to fully carry out his duties as the Chief Elections Officer of the State of California, by enforcing against applicable candidates the provisions contained in Article IV, Section 2 of the California Constitution that establish term limitations for members of California's Senate and Assembly, as enacted by the voters in the election of 1990 in Proposition 140, or, in the alternative, show cause why he should not do so, and thereafter issue a peremptory writ commanding respondent to fully carry out his duties as the Chief Elections Officer of the State of California, by enforcing against applicable candidates the provisions contained in Article IV, Section 2 of the California Constitution that establish term limitations for members of California's Senate and Assembly, as enacted by the voters in Proposition 140 in the election of 1990; and

3. For costs of this proceeding and for such other and further relief as the court deems just and proper.

Dated: 9/30/97

LAW OFFICES OF RAY HENDRICKSON, Ph.D.
HOWARD KLEIN, Esq.

By: /s/ Ray Hendrickson

RAY HENDRICKSON, Esq., Ph.D.
Attorneys for Petitioner

## POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR A PEREMPTORY WRIT OF MANDAMUS

### Petition for Writ of Mandate

Petitioners, who are voters and prospective candidates for the Legislature in the State of California, come before this court requesting that the California Secretary of State, as the State's "Chief Election Officer"[1] by enforcing the state legislative term limits provisions that were upheld by the California Supreme Court in *Legislature of the State of California* v. *Eu*, 54 Cal.3d 492, 816 P.2d 1309 (Cal. 1991) against all applicable candidates for California's legislature without exception.

### ISSUE

Can the Secretary of State of the State of California be compelled to carry out his official duties as the Chief Elections Officer to enforce the state legislative term limit provisions contained in Article IV, section 2 of California's Constitution and which were upheld as constitutional under the First and Fourteenth Amendments of the United States Constitution by the California Supreme Court in *Legislature of the State of California* v. *Eu*, 54 Cal.3d 492, 816 P.2d 1309 (Cal. 1991)?

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[1] See Ann. Cal. Code, Elections § 10 (West, 1996) ("The Secretary of State is the chief elections officer of the state, and has the powers and duties specified in Section 12172.5 of the Government Code."). See also Ann. Cal. Code, Government, § 12172.5, which states in part, "The Secretary of State is the chief elections officer of the state, and shall administer the provisions of the Elections Code. **The Secretary of State shall see that elections are efficiently conducted and that state election laws are enforced.**" [emphasis added.]

**A. The prior legal background that precipitated this Petition for a Writ of Mandate.**

In the November, 1990, general election, the voters of the State of California approved Proposition 140, which amended the California Constitution, by requiring term limits for members of the Legislature and certain elected executive offices. In 1991, the California Supreme Court upheld, against First and Fourteenth Amendment challenges, the state legislative term limit provisions that were approved by the voters of California. *Legislature of the State of California* v. *Eu*, 54 Cal.3d 492, 816 P.2d 1309 (Cal. 1991). Hoping to find a court sympathetic to their particular political interests, several California state legislators who would be unable to run for their same seat because of the state term limits that were upheld by the California Supreme Court filed a lawsuit in federal district court challenging the constitutionality of California's voter approved state term limit provisions.

In *Bates* v. *Jones*, 958 F.Supp. 1446, 1997 WL 199477 (N.D. Cal. 1997), the U. S. District Court, contrary to the principles of res judicata, comity, and "full faith and credit," struck down California's voter approved state legislative term limits, finding that they were "not narrowly tailored to advance compelling State interests" and therefore, "violate[s] the First and Fourteenth Amendments of the United States Constitution." *Bates* v. *Jones*, 958 F.Supp. 1446, 1997 WL 199477 at *2. The case is now on appeal before the Ninth Circuit Court of Appeals on an expedited schedule due to the imminent 1998 elections.

In light of the U. S. District Court decision striking down California's state legislative term limits, California's Secretary of State announced that he would not enforce the state legisla-

tive term limits provisions against those individuals who were parties to the federal court proceeding, if the district court decision is upheld. See Exhibit "A" attached hereto.

However, the Secretary of State intends to enforce the term limits provisions against all other applicable candidates. See Exhibit "A." See also Exhibit "B," an editorial which appeared in the *Wall Street Journal* on September 29, 1997.

Petitioners argue that the Secretary of State must enforce the term limit provisions against all candidates who have satisfied the number of terms in office.

Unwarranted consequences will result if California's Secretary of State is not compelled to enforce California's term limit provisions against ALL applicable candidates.

An effect of the Secretary of State's selective enforcement of the law against only some of the applicable candidates is that some legislative districts in California will have long-term incumbents running for office while there will be other districts in which the candidates running for office are first time candidates or candidates, who although they have held political office before, are running for another political office.

As a result of the conflicting opinions between California's Supreme Court and the U. S. District Court, there is grave uncertainty as to who is or is not able to run for re-election for the same office and in what districts. Voters in some districts will be able to vote for long-term incumbents, while voters in other districts will not be able to do so. Voters are entitled to certainty and predictability of enforcement of the law, and to equal application of the law. The announced intentions of the Secretary of State neither gives voters stable and predictable

enforcement, but actually results in an unequal application of the law and therefore violates the Secretary of State's charged responsibilities.

Incumbent candidates who have become entrenched in the system will represent some districts, whereas other legislative districts in California will have novice, first term legislators.

These districts will have less clout representing the district. The effect of this is that the voters of California will have unequal power in the state legislative assembly. The unseemly consequence is that those districts in California that are represented by long-term legislators who are not having California's legislative term limits enforced against them will have more power and greater influence in the legislature, and therefore, more money being funneled into their districts.

Those districts wherein the Secretary of State will enforce the state term limit provisions forcing out long-term legislators thus leaving those districts to be represented by first term legislators, will have less power and influence than those legislators who have become entrenched in the California state legislative assembly.

**B. This Petition raises issues of significant public importance that affect the basic constitutional right to vote.**

Clearly, the matter before this Court is of great public significance in that it will undoubtedly impact the California citizen's right to vote by affecting how they will vote, if they will vote all, and it will also determine who runs as candidates for California's state legislative assembly. Candidates will likely

choose not to run in districts that have incumbents running that would otherwise be precluded by Proposition 140.

Both the right to vote and the method of conducting elections by the California Secretary of State are at stake in this Petition for a Writ of Mandate.

Under California's Code of Civil Procedure, "for a writ of mandate to issue, two basic requirements are essential, namely, a clear, present and usually ministerial duty on the part of the defendant and a clear, present and beneficial right in plaintiff to performance of that duty." *Taylor* v. *Bd. of Trus. of Del Norte Univ. Sch.*, 683 P.2d 710, 715 (Cal. 1984) (citing Code Civ.Proc., § 1085 (sic); *People ex rel. Younger* v. *County of El Dorado*, 487 P.2d 1193 (Cal. 1971)).[2] As the "Chief Election Officer" for the State of California, the Secretary of State is under a duty to ensure that elections are conducted and that state election laws are enforced. See Ann. Cal. Code, Government, § 12172.5 (West, Cum. Pocket Part 1996-97). Thus, the Secretary of State is obligated under his statutory duties to enforce the state legislative term limit provisions to assure the voters and candidates in California that the elections will be conducted and that they will be conducted according to the law.

In *Jolicoeur* v. *Mihaly*, 488 P.2d 1 (Cal. 1971), the original jurisdiction of the California Supreme Court was invoked for a petition for a writ of mandate. The court was asked to determine whether minors who were recently registered to vote and who lived away from their parents residence should be presumed to reside with their parents or to be treated like other

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[2] Ann. Cal. Code, Civil Procedure § 1086 states "The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested."

voters for acquiring a residency for voting purposes. *Id.* at 488 P.2d 2. In this case, Registrars of Voters refused to register some minors because they had not registered at their parents' residence. *Id.* at 488 P.2d 3.

In *Jolicoeur*, the California Supreme Court noted that voting registrars are public officials with ministerial duties, including registering voters. Thus, the Court found that "Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law." *Id.* at 3, n.2 (citations omitted). Similarly, California's Secretary of State as the Chief Election Officer is under a duty to conduct elections and enforce state election laws. See Ann. Cal. Code, Government, § 12172.5.

Although the Secretary of State has stated that he will enforce the term limits provisions against any candidate who was not a party to the federal district court decision, he will not enforce the state term limit provisions against those individuals who were parties to the federal district action. It is this refusal by the Secretary of State to carry out his duties as Chief Election Officer and enforce the term limit provisions across the board that is at issue in this Petition. In *Jolicoeur*, the California Supreme Court acknowledged that "mandamus is also appropriate for challenging the constitutionality or validity of statutes or official acts." *Id.* at 3, n.2 (citations omitted).

Petitioners challenge the validity of the Secretary of State's actions in not enforcing the law which was upheld by the California Supreme Court in *Legislature of the State of California* v. *Eu*, 54 Cal.3d 492, 816 P.2d 1309 (1991). Petitioners seek a Writ of Mandamus to compel the Secretary of State to perform his duties as the Chief Election Officer and enforce the provisions of California's voter approved state term limits in

Article IV, section 2 against all applicable individuals running for California's legislative assembly. In so doing, the uncertainty and confusion caused by the conflicting decisions between the California Supreme Court and the U. S. District Court can be resolved. Potential candidates will be able to make their decision as to whether they can or want to run for office. Furthermore, the voters will know who may or may not run for the 1998 elections and whether, among the legislative districts, their votes will have equal strength.

The voters have a constitutional right to have their votes be equal. That cannot be preserved under the current state of uncertainty as to whom do the term limit provisions apply. That uncertainty can only be resolved by this Court granting Petitioners' petition for a peremptory Writ of Mandamus compelling the Secretary of State to carry out his duties and enforce the provisions of Article IV, section 2 against all applicable candidates.

The voters also have a constitutional right to have the law applied equally to all prospective candidates, not just for some incumbents and not for others. That is the law of the State of California as pronounced by the California Supreme Court in *Legislature of the State of California* v. *Eu*, 54 Cal.3d 492, 816 P.2d 1309 (1991). That is all the voters in this action are seeking — that the Secretary of State enforce equally and evenly the election laws of the State.

WHEREFORE, Petitioners seek relief before this Court in granting their petition for a Peremptory Writ of Mandamus against Bill Jones, the Secretary of State of the State of California to compel him to fully enforce the term limit provisions

in Article IV, section 2 pursuant to his duties as Chief Election Officer.

Dated: September 30, 1997

LAW OFFICES OF RAY HENDRICKSON, Ph.D.
HOWARD KLEIN, Esq.

By: /s/ Ray Hendrickson

RAY HENDRICKSON, Esq., Ph.D.
Attorneys for Petitioner

## VERIFICATION

I, J. HARRIS DEAN, am one of the petitioners in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge, or are stated upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 30, 1997

/s/ J. Harris Dean

DANIEL E. LUNGREN

Attorney General
State of California
DEPARTMENT OF JUSTICE

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August 12, 1997

Ms. Cathy Catterson, Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street, P.O. Box 193939
San Francisco, CA 94119-3939

RE: Bates v. Jones
97-15684 & 97-15914

Dear Ms. Catterson:

Defendant and Appellant Secretary of State Bill Jones by this letter responds to the Order filed on August 8, 1997 directing a response "as to the time periods in which incumbents who may wish to seek reelection to offices that they are barred from holding by Proposition 140 must be advised whether the measure is valid." The Secretary of State assumes that "incumbents" refers to incumbent members of the California Legislature and limits its response to the requirements for candidates to those offices.

**Exhibit "A"**

A declaration of intention to become a candidate for party nomination is the first required document that must be filed by the candidate. Candidates who wish to have their names appear on the ballot in the June 1998 primary election must file a declaration of intention to become a candidate not more than 14, nor less than five, days before they file their nomination papers. Calif. Elect. Code §§ 8022, 8023, 8350. The nomination papers must be filed during a window period that runs from 113 days to 88 days before the primary election. Calif. Elec. Code § 8020 (a) & (b).[3] Therefore, the declaration of intention period runs from 127 to 118 days prior to the election. Since the primary election will be held on June 2, 1998, the window period for filing the declaration of intention to become a candidate will run January 26, 1998 to February 4, 1998.[4]

A decision from this court upholding the constitutionality of California's legislative term limits should be effective by January 26, 1998, the beginning period for the filing of the declaration of intention to become a candidate. In any event, the decision should be effective not later than a reasonable time before February 4, 1998 to permit candidates to comply

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[3] If a candidate wishes to submit a petition containing signatures of registered voters in lieu of a filing fee, the in lieu-filing fee petition must be filed at least 15 days prior to the close of the nomination period. Calif. Elect. Code § 8106.

[4] If the incumbent fails to file a timely declaration of candidacy, the time for persons other than the incumbent to file such a declaration is extended until February 9, 1998, the first day for filing nomination papers. Calif. Elect. Code § 8022 (a) & (b). If, however, the incumbent's failure to file a timely declaration was due to the fact that he or she has already served the maximum number of permitted terms, there is no extension of time. Calif. Elect. Code § 8022(a). Also, prospective write-in candidates must file a statement of write-in candidacy and nomination papers during a window period that runs from the 57th day to the 14th day prior the election. Calif. Elect. Code § 8601. Thus, write-in candidates for the June 1998 primary must file the required papers between April 6 and May 19, 1998.

with the deadline for the filing of a declaration of intention to become a candidate.

On the other hand, an affirmance by this Court would not suffice to advise incumbents whether the measure is valid. As Justice Fletcher noted in *Bland* v. *Fessler*, 88 F.3d 729, 739 (9th Cir. 1996), the California courts do not regard themselves as bound by Ninth Circuit interpretations of the United States Constitution. *See People* v. *Bradley*, 1 Cal.3d 80, 86 91969); *Raven* v. *Deukmejian*, 52 Cal.3d 336, 352 (1990). California courts would continue to be bound by *Legislature* v. *Eu*, 54 Cal.3d 492 (1991), cert. denied, 503 U.S. 919 (1992). Thus, an affirmance would create a conflict between the federal and state courts as to all candidates who are neither a party to this litigation nor were a party to *Legislature* v. *Eu*. The conflict could only be resolved by a United States Supreme Court ruling binding on both the state and federal courts. This is, of course, one reason that in the event of an affirmance it would

be important to maintain the stay of the injunction of the district court pending all further appellate review.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General

/s/ PAUL H. DOBSON
Deputy Attorney General

PHD:ls

cc: Joseph Remcho, Esq.
Deborah La Fetra, Esq.
Prof. Einer Elhauge, Esq.

The Wall Street Journal; September 29, 1997: **"Review & Outlook: A Helping Hand for Incumbents."**

The Ninth Circuit Court of Appeals panel is inviting all of California's incumbent state legislators who will be forced out of office next year due to term limits to become last-minute parties to a lawsuit the court is likely to use to overthrow the state's term limits law. This kindly invitation would have the practical effect of allowing all incumbents to run again, despite the fact that the California Supreme Court upheld term limits in 1991 on a 6-to-1 vote. State officials wonder how much sovereignty they will have left should the Ninth Circuit panel of judges ignore previous state decisions and throw out the law.

Opponents of California's term limits have been judge shopping for years in an effort to overturn the will of the people. This year they hit the judicial jackpot in federal district Judge Claudia Wilkin. She found California's term limits violated the U.S. Constitution because its lifetime limits of six or eight years for state legislators limited the voting rights of Californians. But state voters agreed on term limits, just as voters have generally agreed with age requirements for U.S. Senators or the President. In addition, the U.S. Constitution stipulates that "no person shall be elected to the office of President more than twice." That is the very kind of lifetime ban that Judge Wilkin declared unconstitutional. Huh?

You'd think such a ruling would be laughed out of court on appeal, but the luck of the draw drew a Ninth Circuit panel of one conservative appointee and two liberals, Stephen Reinhardt and Betty Fletcher. Judge Reinhardt is perhaps the premier judicial activist in the country and is a major reason the Supreme Court reversed the Ninth Circuit in 28 of the 29

Ninth Circuit cases it heard last term. From the tenor of the judges' comments during argument of the case, most observers expect the panel to vote 2-to-1 against term limits.

California's Secretary of State Bill Jones, a Republican, announced last month that should the term limits law fall he would apply the ruling only to the three lawmakers who filed suit against it. He says the 24 other "termed-out" state legislators shouldn't benefit from a rogue ruling until the U.S. Supreme Court decides the case once and for all. Until then, state legislators should be bound by their state Supreme Court's unequivocal ruling.

The Ninth Circuit promptly took the unusual step of inviting all incumbent and former incumbent legislators to join as intervenors in the suit even though a decision was imminent. That way the termed-out legislators will be allowed to run again should the judges throw term limits out. Last week, 19 of them promptly did just that. An outraged Secretary of State Jones has asked the U.S. Supreme Court to take the case away from the Ninth Circuit. The Supreme Court will consider that request at a hearing today.

Complicating matters is the decision of former GOP Assembly Speaker Curt Pringle to join the suit so he can argue he *should* be term-limited out of office next year. Mr. Pringle says it's unbecoming for legislators to use sly tricks to stay in office and he plans to honor the term limit even if the court doesn't.

Obviously, one way or another this case is heading for the Supreme Court, which is likely to once again slap the Ninth Circuit down if it issues yet another rogue ruling. But in the interim a bunch of pols the voters had put out to pasture may

hang on to their sinecures. It's no wonder voters are frustrated with judges assuming decision-making power and acting as if they didn't matter. That is a large part of why courts increasingly lack the credibility with the public they once had.

**Exhibit "B"**

Affidavit

1. I, J. Harris Dean, being first duly sworn, hereby state that I am a registered voter of California.

2. My voting address is: 2217 Vista Del Sol, Fullerton, CA 92831.

3. I am of legal age and qualified to vote in the State of California.

4. I want term limits imposed on all legislators so that my district is not hurt by having less senior legislators who do not have the seniority to bring home state dollars to my district.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 28, 1997.

/s/ J. Harris Dean

**Exhibit "C"**

Affidavit

1. I, Bruce W. Whitaker, being first duly sworn, hereby state that I am a registered voter of California.

2. My voting address is: 1918 W. Baker Avenue, Fullerton, CA 92833.

3. I am in favor Term Limits as passed by the voters of California in Proposition 140, in the general election of No-

vember 1990. I had intended on being a candidate for the legislature, but will not run if the Secretary of State does not enforce Proposition 140, as I believe the law should and must be enforced, and it is too difficult to run against an incumbent legislator.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 26, 1997.

/s/ Bruce W. Whitaker

**Exhibit "D"**

Affidavit

1. I, Peter Petruzzi, being first duly sworn, hereby state that I am a registered voter of California.

2. My voting address is: 125 Capra Way, #304, San Francisco, CA 94123.

3. I am of legal age and qualified to vote in the State of California.

4. I want term limits imposed on all legislators so that my district is not hurt by having less senior legislators who do not have the seniority to bring home state dollars to my district.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 26, 1997.

/s/ Peter Petruzzi

**Exhibit "E"**

Affidavit

1. I, Johnnie Walker, being first duly sworn, hereby state that I am a registered voter of California.

2. My voting address is: 1736 N. Sycamore Avenue, Apt. 206, Los Angeles, CA 90028.

3. I am of legal age and qualified to vote in the State of California.

4. I want term limits imposed on all legislators so that my district is not hurt by having less senior legislators who do not have the seniority to bring home state dollars to my district.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 27, 1997.

/s/ Johnnie Walker

**Exhibit "F"**

**PROOF OF SERVICE BY MAIL**

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 4199 Campus Drive, Suite 700, Irvine, CA 92715

On September 29, 1997, I served the within Petition for Writ of Mandate, on the attorneys for the parties in said action, or on the parties if they are not represented by counsel, by facsimile transmission to the party listed below, and by placing a

true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, CA addressed as follows:

Bill Jones, Secretary of State
c/o Thomas S. Knox
Knox, Lemmon & Anapolsky, LLP
One Capitol Mall, Suite 700
Sacramento, CA 95814
[has been appointed to accept service on
behalf of the Secretary of State]
FAX 916-231-9912

Remcho, Johansen & Purcell
220 Montgomery Street, Suite 800
San Francisco, CA 94104
FAX 415-398-7256

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed September 29, 1997.

/s/ Howard Klein

## LIST OF PARTIES SERVED

Joseph Remcho, Esquire
Counsel for All Respondents
Remcho, Johansen & Purcell
220 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 398-6230

Deborah LaFetra
Counsel for Peter Schabarum & Lewis Uhler,
Intervenor-Appellants Below
Pacific Legal Foundation
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Sacramento, CA 95833-3881
(916) 641-8888

Cathy Catterson, Clerk
United States Court of Appeals
for the Ninth Circuit
95 Seventh Street - P.O. Box 193939
San Francisco, CA 94119-3939

Hon. Joseph Sneed
U.S. Circuit Judge
95 Seventh Street
7th and Mission, Room 326
San Francisco, CA 94103

Hon. Betty Fletcher
U.S. Circuit Judge
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Seattle, WA 98104

Hon. Stephen Reinhardt
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IN THE
***SUPREME COURT OF THE UNITED STATES***
OCTOBER TERM, 1997

BILL JONES, SECRETARY OF STATE OF CALIFORNIA

*Petitioner*,

v.

BATES, ET AL.

*Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI (OR IN THE ALTERNATIVE WRITS OF PROHIBITION AND MANDAMUS) TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

# SUPPLEMENTAL BRIEF

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6 pp

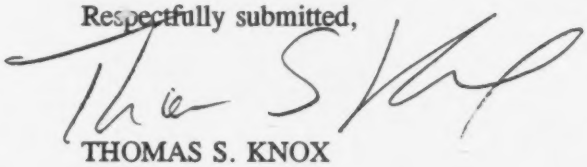
## SUPPLEMENTAL BRIEF

Petitioner Bill Jones, Secretary of State of California, files this Supplemental Brief pursuant to Supreme Court Rule 15.8, which permits a party to file a supplemental brief calling attention to intervening matters not available at the time of the party's last filing.

Petitioner has advised this Court that unless the pending "Petition For A Writ Of Certiorari, Or Writs Of Prohibition And Mandamus" ("Petition") is granted immediately, the Secretary of State will be caught in a cross fire between state courts which will enforce Proposition 140 based on the decision of the California Supreme Court in *Legislature v. Eu*, 54 Cal.3d 492 (1991) and the contrary rulings of the federal court in this case. Petition, p. 19.

Attached as Appendix "A" to this Supplemental Brief is a news account published in the *Sacramento Bee* on September 26, 1997, reporting that litigation will be filed next week in state court to enforce Proposition 140, California's term limits initiative.

Respectfully submitted,



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September 26, 1997

**APPENDIX "A"**

and two young boys.
e judgment will be appealed
CI, attorneys said.
Soto and her family sued the
ital after she was left in a
vegetative state during a
surgery on her hand.

**ic slur brings discipline**

WATSONVILLE – A middle school science teacher will disciplined for reportedly call- her class "stupid damn Mexi- s" while trying to punish a dis- tive student.

he incident occurred Sept. 12 en Lakeview Middle School cher Sylvia Forsyth lashed out her class of 23 students – all tino, said 13-year-old eighth- der Jorge Perales, who com- ined to school officials.

Forsyth apparently became agi- ted after she dismissed the trou- esome student, prompting ughter from the class. "Every- e laughs at what he says, you upid damn Mexicans," students oted her as saying.

A school district spokesman id Forsyth apologized to the mily Wednesday.

– Bee news services

signing up Campbell as a Democrat. His wife testified earlier that he was angry about her candidacy and threatened to drop out.

Deputy District Attorney Brent Romney said he would consider offering Campbell immunity if she finding she lied about circulating her own nomination petitions. They were actually circulated by GOP aides, three of whom pleaded guilty to misdemeanors and received probation.

# Advocates of term limits plan to take fight to a third court

**By Claire Cooper**
**Bee Legal Affairs Writer**

With the fate of California's legislative term limits already in the laps of two courts, leaders of the national term-limits movement are planning to sue in a third court next week.

U.S. Term Limits said Thursday that it will ask a state Superior Court, probably in Los Angeles, to enforce Proposition 140, which limits California Assembly members to three terms and state senators to two terms.

Paul Jacob, the organization's executive director, said the plaintiffs will be five to eight "ordinary constituents and potentially some people who might seek to run for the Legislature if Proposition 140 is enforced."

Legislators are not likely to be among the group, he said.

The question of whether term limits will be enforced in the 1998 elections already is before two federal courts – the 9th U.S. Circuit Court of Appeals in San Francisco and the U.S. Supreme Court.

The 9th Circuit is considering an appeal of a federal trial judge's decision that California's version of term limits is unconstitutional because it imposes a lifelong ban on veteran lawmakers.

Meanwhile, Secretary of State Bill Jones, anticipating a similar decision by the 9th Circuit, has petitioned the Supreme Court to take over the case on grounds that the California Supreme Court upheld Proposition 140 six years ago.

U.S. Term Limits said its new state court suit will demonstrate "the conflict between state and federal court rulings that can only be remedied by U.S. Supreme Court action."

But former Assemblyman Tom Bates, who initiated the federal court case to strike down term limits, said his opponents' new strategy "really demonstrates that they're running scared. They're trying to circumvent the 9th Circuit in every way possible."


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